Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

JOHN J. BRODERICK, Esquire,

Petitioner,

v.

UNITED STATES OF AMERICA,

Creditor-Respondent,

and PEOPLE OF THE STATE OF NEW YORK by Dennis C. Vacco, Attorney General, *et al.*,

Nominal Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Roadway Express, Inc. v. Piper*, 457 U.S. 752, 766 (1980), this Court declared that, in the context of an award of attorney fees as an exception to the American rule, a court may tax counsel fees against an attorney "who *willfully* abused judicial processes". In *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991) this Court emphasized the "importance" of the issues involved in awarding counsel fees as an exception to the American rule. Against this background, the question presented for review is:

> Whether – as the Second Circuit court of appeals held below and as the Seventh Circuit has also held – a finding of *bad-faith conduct* may be *"inferred"* (as argued by the Government for the first time in the court of appeals) *solely* from a finding that "the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken from some improper purpose such as delay"?

PARTIES

Petitioner John J. Broderick, Esquire was an appellant in the court of appeals and counsel for Respondents-Appellants in a special civil contempt proceeding in the district court.

Respondents-Appellants in the court of appeals were as follows: Daniel Brusstar; Norman Weslin; John Dunkle; Mary L. Biltz; E.J. Gannon; Carol M. Hagen; Michael J. Henry; Clarence Hinke; Colin Hudson; Ethel Norton; Edward Sauley; Lola Yellico; and James Yonan. They are Nominal Respondents in this Court.

Raymond Mylott was a Respondent in the district court but did not appeal to the court of appeals.

Operation Rescue National; Randall Terry; Keith Tucci; Youth for America; Missionaries to the Pre-Born; Joseph Foreman; John and Jane Does; Patrick Mahoney and B.O.R.N. were Defendants in the district court but did not appeal to the court of appeals and were not joined in the contempt proceeding as parties.

United States of America appeared and argued as Creditor-Appellee in the court of appeals and is Creditor-Respondent in this Court.

People of the State of New York, by Dennis C. Vacco, Attorney General, was Plaintiff Appellee in the court of appeals and is made a Nominal Respondent in this Court.

Operation Rescue National; Youth for America; Missionaries to the Pre-Born and B.O.R.N. are not corporations under Rule 29.6 of the Rules of this Court.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES ii

DECISIONS BELOW 1

JURISDICTION 1

STATUTORY PROVISIONS 1

STATEMENT OF THE CASE 1

A. Course of Proceedings 2

B. Statement of Facts 3

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 8

APPENDICES

Court of Appeals decision 1a

District Court decision 21a

Court of Appeals judgment 28a

TABLE OF AUTHORITIES

Page

CASE:

Baker Industries v. Cerberus, Ltd., (*Appeal of Cravath, Swaine & Moore*), 764 F.2d 204, 215-216 n.3, 18 ALR Fed. 1, 21 n.3 (CA3, 1985) 6

Braley v. Campbell, 832 F.2d 1504 (CA10, 1987) 7

Chambers v. Nasco, Inc., 501 U.S. 32, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991) 2, 6, 7, 8

Christiansburg Garment Co. v. E.E.O.C., 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978) 7

Knorr v. Harbil, Inc., 738 F.2d 223 (CA7, 1984) 7

Newman v. Piggie Park Enterprises, 390 U.S. 400, 402 n.4, 88 S.Ct. 964, 966 n.4, 19 L.Ed.2d 1263 (1968) 7

Roadway Express, Inc. v. Piper, 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980) 6

STATUTE:

28 U.S.C. 1254(l) 1

28 U.S.C. 1927 ..... *passim*

Fed. R. Civ. P. 1 3

Fed. R. Evi. 102 3

Fed. R. Evi. 1006 3

OTHER AUTHORITIES:

Annotation, "What conduct constitutes multiplying proceedings unreasonably and vexatiously so as to warrant imposition of liability on counsel under 28 U.S.C. 1927 for excess costs, expenses, and attorney's fees", 81 ALR Fed. 36 2

DECISIONS BELOW

The decision and Order of the district court (HON. ROBERT J. WARD) imposing a $2,500 sanction to be paid by Petitioner JOHN J. BRODERICK, Esq. pursuant to 28 U.S.C. 1927 and the inherent powers of the district court is reproduced in the Appendix (21a to 27a). The decision of the court of appeals which, *inter alia*, affirmed the sanction of $2,500, is reproduced in the Appendix (1a to 20a) and is reported at 80 F.3d 64 (1996).

JURISDICTION

The judgment in the court of appeals was entered on March 29, 1996. (28a) This Court has jurisdiction, under 28 U.S.C. 1254(l), to review the judgment of the court of appeals.

STATUTORY PROVISIONS

28 U.S.C. 1927 is reproduced in the Appendix (18a) as part of the text of the decision of the court of appeals.

STATEMENT OF THE CASE

Petitioner is a trial attorney with thirty-three years of trial experience. He has never before been sanctioned by any court or judge. In the case at bar, he was purportedly sanctioned $2,500 for showing a one-hour video tape put *in evidence* by his opponent.

Since 1988, Petitioner has represented pro-life "rescuers" in New York and many other States. In the case at bar, the video tape at issue was taken by the police at the June 28, 1994 rescue at an abortion clinic in Dobbs Ferry, New York. The video tape had been *admitted in evidence against Petitioner's clients* in a civil contempt proceeding. One client, LOLA YELLICO, asked to have the video tape shown at trial.

The civil contempt proceeding was being tried in the United States District Court for the Southern District of New York. The bench trial was before Honorable ROBERT J. WARD, who interrupted the video tape several times, saying that it was "cumulative" and that he would consider sanctions against Petitioner.

A. Course of Proceedings

On July 28, 1994, at the conclusion of the three-day special civil contempt proceeding, the district court imposed $2,500 in sanctions against Petitioner in open court pursuant to 28 U.S.C. 1927 and the inherent powers of the court. No finding of bad faith was made on that date.

The court's failure to make the required finding of bad faith was raised in a timely motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure, filed on August 23, 1994. In that motion, Petitioner relied on *Chambers v. Nasco, Inc.*, 501 U.S. 32 (1991).

The district court denied the motion in a Memorandum and Order on October 6, 1994 (reproduced at 21a to 27a). In his decision, Judge Ward made a finding of bad

faith *on the ground that Petitioner had refused to apologize* when asked by the court to do so for wasting the court's time at trial with the video tape of the June 28, 1994 rescue.

The $2,500 sanction was payable to the United States of America and the Government appeared as Creditor-Appellee in Petitioner's appeal of the sanction.

For the first time on appeal in the court of appeals, the Government argued that bad faith could be "inferred" when an attorney's actions are *so completely without merit as to require the conclusion that such actions must have been undertaken for some improper purpose such as delay.*

The court of appeals agreed with the Government's argument and incorporated the "inference" of bad faith in its decision (18a).

As a basis for "inferring" bad faith on the part of Petitioner under 28 U.S.C. 1927 the court of appeals inexplicably used a completely new interpretation of Rule 1 of the Federal Rules of Civil Procedure and Rules 102 and 1006 of the Federal Rules of Evidence to reject the right of Petitioner's client to see the evidence against her in open court (19a).

The court of appeals did not reach the issue of the inherent powers of the district court (20a).

B. Statement of Facts

Plaintiff JOHN J. BRODERICK, ESQ., was the trial counsel for 13 alleged contemnors in a proceeding for civil contempt, which was tried before Judge Robert J. Ward on July 26, 27 and 28, 1994. At the conclusion of the

trial Petitioner was sanctioned $2,500 for showing a video tape in evidence which the district court punished pursuant to 28 U.S.C. 1927 and the district court's inherent powers.

It was uncontroverted[1] in the district court and the court of appeals that from the beginning of the bench trial Petitioner was interested in rapid and expeditious proceeding. As a veteran of hundreds of trials with thirty-three years experience, he believed that it is wasteful, counter-productive and even unprofessional to slow down any court proceeding.

Even before the trial Petitioner accepted service of the Order to Show Cause on behalf of one client and he accepted service of a subpoena on behalf of another. Although his Answering Statement was not due until the morning of July 26, 1994, Petitioner made sure that it was served the week before that – on or about July 20, 1994 – for most of his clients and he hand-delivered the Answering Statement of the remaining client on July 25, 1994 to opposing counsel and to the court. This was done to expedite the hearing and to give the other side sufficient notice of Petitioner's position.

In the course of the trial, Petitioner entered into stipulations concerning admission into evidence of two video tapes. It would have slowed everything down to have required witnesses to identify these video tapes and it would have wasted everyone's time; Petitioner decided

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[1] In the court of appeals, the Government identified other actions in the record which allegedly showed a lack of merit but did not controvert the facts set forth here.

to stipulate them into evidence. Also, Petitioner's cross-examinations and direct examinations were short, and to the point. With the exception of the present controversy, it is undisputed that time was saved as the trial moved more quickly due to Petitioner's cooperation as an attorney.

At mid-day on July 28, 1994, the parties started viewing the video tape evidence of the June 28, 1994 "rescue". The video tape had been put in evidence by the Attorney General but not shown. Part way through it, Judge Ward suggested that Petitioner agree to terminate the video tape as the rest of it was what Judge Ward termed "cumulative". The district court's suggestion put Petitioner in an impossible situation: every alleged contemnor had an absolute right to see evidence admitted against him or her. If one alleged contemnor exercises that right, no one – not the judge, nor the alleged contemnor's own attorney – could take it away. That is exactly what one alleged contemnor did – LOLA YELLICO exercised that right at trial by insisting on seeing the video tape in evidence. In that situation, Petitioner as an attorney could not agree to terminate the running of the video tape even if it was deemed to be "cumulative" evidence by the district court.

REASONS FOR GRANTING THE WRIT

I. The holding that bad faith under 28 U.S.C. 1927 may be "inferred" from an alleged lack of merit in an attorney's position robs this Court's requirement of a finding of bad faith of any meaning.

This Court has closely watched the area of sanctioning attorneys and has given special importance to proper restraint by the federal judiciary in utilizing 28 U.S.C. 1927 and the inherent powers of court as exceptions to the American rule that each side shall bear the cost of its attorneys fees. See *Chambers v. Nasco, Inc., supra,* 501 U.S. 32 (1991); *Roadway Express, Inc. v. Piper,* 447 U.S. 752 (1980).

In *Roadway* and *Chambers,* willfulness, improper purpose and bad faith were at the core of this Court's analysis of the propriety of sanctions under 28 U.S.C. 1927 and the inherent powers of the court. It is these very elements that distinguish other sanctions, such as Rule 11 of the Federal Rules of Civil Procedure[2].

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[2] See Annotation, "What conduct constitutes multiplying proceedings unreasonably and vexatiously so as to warrant imposition of liability on counsel under 28 U.S.C. 1927 for excess costs, expenses, and attorney fees", 81 ALR Fed. 36.

In the case at bar, there has never been a finding with respect to Petitioner JOHN J. BRODERICK, Esquire of willfulness or improper purpose[3]. Subjective bad faith[4] is not even identified as suc' by the court of appeals. Instead, an *abstract* bad faith is "inferred"[5] from what the court of appeals views as a complete lack of *objective* merit. In effect, the elements in *Roadway* and *Chambers* have been obliterated.

The decision of the court of appeals is squarely opposed to the holding of this Court in *Roadway* and *Chambers*. Accordingly, this Court should *vacate and remand* for further proceedings consistent with its holdings.

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[3] The Circuits are "inconsistent" in applying Section 1927's "unreasonable and vexatious" requirement but a *majority* appear to adopt the approach of implying a willful bad faith or intentional misconduct requirement. See dissenting opinion in *Baker Industries v. Cerberus, Ltd.*, (*Appeal of Cravath, Swaine & Moore*), 764 F.2d 204, 215-216 n.3, 81 ALR Fed. 1, 21 n.3 (CA3, 1985). See also, Annotation, *supra*, 81 ALR Fed. at 44 (*majority* apply willful bad faith under Section 1927).

[4] In Title II and Title VII cases, this Court has left the impression that its "willfulness" standard requires *subjective* bad faith by distinguishing the word "vexatious", as used in those cases from the common law exception to the American rule. See *Christiansburg Garment Co. v. E.E.O.C.*, 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978) (subjective bad faith not necessary for award against a Title VII Plaintiff for "vexatious" litigation); *Newman v. Piggie Park Enterprises*, 390 U.S. 400, 402 n.4, 88 S.Ct. 964, 966 n.4, 19 L.Ed.2d 1263 (1968) (same for Title II Plaintiff). The Tenth Circuit, however, has expressly held that subjective bad faith should *not* be implied under Section 1927. *Braley v. Campbell*, 832 F.2d 1504, 1512 (CA10, 1987).

[5] The Seventh Circuit has also held that bad faith may be "inferred" from lack of merit. *Knorr v. Harbil, Inc.*, 738 F.2d 223 (CA7, 1984).

CONCLUSION

For the foregoing reason, Petitioner prays that this Petition be granted and that the $2,500 sanction against Petitioner as an attorney under 28 U.S.C. 1927 be *vacated and remanded* for further proceedings consistent with this Court's decisions in *Roadway* and *Chambers*.

Dated: New York, New York
June 27, 1996

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 259, 260 – August Term, 1995

(Argued: October 18, 1995 Decided: March 29, 1996)

Docket Nos. 94-7947, 94-9039

PEOPLE OF THE STATE OF NEW YORK, by DENNIS C. VACCO, Attorney General of the State of New York,

Plaintiff-Appellee,

-vs.-

OPERATION RESCUE NATIONAL; RANDALL TERRY; KEITH TUCCI; YOUTH FOR AMERICA; MISSIONARIES TO THE PRE-BORN; JOSEPH FOREMAN; JOHN AND JANE DOES; PATRICK MAHONEY; B.O.R.N.,

Defendants,

RAYMOND MYLOTT,

Respondent,

DANIEL BRUSSTAR; NORMAN WESLIN; JOHN DUNKLE; MARY L. BILTZ; E.J. GANNON; CAROL M. HAGEN; MICHAEL J. HENRY; CLARENCE HINKE; COLIN HUDSON; ETHEL NORTON; EDWARD SAULEY; LOLA YELLICO; JAMES YONAN,

Respondents-Appellants,

UNITED STATES OF AMERICA,

Creditor-Appellee,

JOHN. J. BRODERICK, Esquire,

Appellant.

Before:

MESKILL, MAHONEY, and WALKER,

Circuit Judges.

Appeal from judgments entered August 11, 1994 in the United States District Court for the Southern District of New York, Robert J. Ward, *Judge*, that held respondents-appellants in civil contempt of an injunction of the court and awarded injunctive relief, compensatory damages, and attorney fees, and from an order entered August 11, 1994 that assessed a monetary sanction against appellant John J. Broderick.

Affirmed in part, vacated in part, and remanded.

JOSEPH P. SECOLA, New Milford, Connecticut (McCarthy & Secola, New Milford, Connecticut, The Rutherford Institute of Connecticut, New Milford, Connecticut, of counsel), *for Respondents-Appellants.*

A. LAWRENCE WASHBURN, JR., New York, New York, *for Respondents-Appellants and Appellant.*

SOOKNAM CHOO, Assistant Attorney General of the State of New York, New York, New York (Dennis C. Vacco, Attorney General, Victoria A. Graffeo, Solicitor General, Barbara A. Mehlman, Assistant Attorney General, New York, New York, of counsel), *for Plaintiff-Appellee.*

EDWARD SCARVALONE, Assistant United States Attorney for the Southern District of New York,

New York, New York (Mary Jo White, United States Attorney, Steven M. Haber, Assistant United States Attorney, New York, New York, of counsel), *for Creditor-Appellee*.

MAHONEY, *Circuit Judge*:

Respondents-appellants Daniel Brusstar, Norman Weslin, John Dunkle, Mary L. Biltz, E.J. Gannon, Carol M. Hagen, Michael J. Henry, Clarence Hinke, Colin Hudson, Ethel Norton, Edward Sauley, Lola Yellico, and James Yonan ("Respondents") appeal from judgments entered August 11, 1994 in the United States District Court for the Southern District of New York, Robert J. Ward, *Judge*, that adjudicated them in civil contempt of a prior preliminary injunction of that court, awarded injunctive relief, compensatory damages, and attorney fees against all of the Respondents, and also assessed a civil contempt fine against Sauley. Respondents contend that they were not proper parties to the contempt proceeding because none of them are named in, or were acting in concert with anybody who is named in, the prior preliminary injunction. Respondents further contend that plaintiff-appellee the State of New York ("New York") lacked standing to recover the compensatory damages awarded by the district court. In addition, Sauley challenges the district court's calculation of his pro rata share of costs and attorney fees.

Appellant John J. Broderick was counsel for Respondents, except Brusstar, at the proceedings below. He appeals from an order of the district court entered August 11, 1994 that assessed a $2,500 sanction against him pursuant to 28 U.S.C. § 1927 and the district court's

inherent powers. The district court sanctioned Broderick after Broderick insisted upon playing certain videotaped evidence in open court despite the court's repeated admonitions that the evidence was cumulative and wasteful of the court's time. Because Broderick was directed to make payment to the United States, the United States joins in this appeal as creditor-appellee.

We affirm the district court's determination that Respondents are proper parties to this proceeding, and therefore affirm the injunctive relief entered against them. However, we find that New York lacked standing to recover compensatory damages on behalf of nonparty entities injured by Respondents' conduct, and accordingly vacate the award of damages and remand for recalculation of attorney fees. Finally, we affirm the district court's sanction against Broderick.

Background

A. *The Contempt Proceeding.*

This case involves violations of a preliminary injunction issued in the district court on July 13, 1992 (the "1992 Injunction") in the underlying action, which was brought by the Attorney General of the State of New York against defendants Operation Rescue National, Randall Terry, Keith Tucci, Youth for America, Missionaries to the Pre-Born, Joseph Foreman, Patrick Mahoney, John and Jane Does, and the Bi-State Operation Rescue Network ("B.O.R.N.") (collectively the "Enjoined Parties"), and alleged that their anti-abortion protest activity violated 42 U.S.C. § 1985(3) and New York law. The 1992 Injunction restrained the Enjoined Parties, their "officers, directors,

agents, and representatives . . . , and all other persons known or unknown, acting in their behalf or in concert with them," from, *inter alia*, "trespassing on, [or] blocking or obstructing . . . ingress into or egress from any facility . . . at which abortions are performed in New York City and in all locations within the Southern District of New York."[1]

The instant contempt proceeding arose out of two anti-abortion protests on October 9, 1993 and June 28, 1994, at which Respondents and Raymond Mylott[2] participated in physical blockades of the Women's Medical Pavilion (the "Pavilion"), a facility at which abortions are performed that is located within the Southern District of New York in the Village of Dobbs Ferry (the "Village"). In connection with the October 9, 1993 protest, Respondents, except Brusstar, were arrested, tried, and convicted of state law offenses, including trespass and disorderly conduct. In connection with the June 28, 1994 protest, Respondents, with the exception of Brusstar and Dunkle, were once again arrested, tried, and convicted of violations of state law, including disorderly conduct, trespass, and criminal contempt.

On July 1, 1994, New York moved by order to show cause in the district court for an order holding Respondents in contempt of the 1992 Injunction pursuant to 18 U.S.C. § 401, Rule 70 of the Federal Rules of Civil Procedure, and Rule 43 of the Civil Rules of the United States

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[1] This Court recently upheld the 1992 Injunction. *See New York by Abrams v. Terry*, 45 F.3d 17 (2d Cir. 1995).

[2] Mylott, a named respondent who participated in only the first of the two protests, entered into a settlement with New York and does not join in this appeal.

District Court for the Southern District of New York.[3] New York sought "civil damages" in the amount of $75,000 against each of the Respondents, plus costs, attorney fees, and other just and proper relief.[4]

A hearing was held on July 26-28, 1994 at which Respondents (except Sauley, who had entered into a settlement with New York, and Brusstar, who had been found in default after failing to appear), were adjudicated in civil contempt.[5] The district court found that Respondents had received notice of the 1992 Injunction

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[3] 18 U.S.C. § 401, which governs criminal contempt, and Rule 70, which deals with the enforcement of judgments relating to property, are not applicable here. Rule 43 provides in pertinent part:

> (a) A proceeding to adjudicate a person in civil contempt of court . . . shall be commenced by the service of a notice of motion or order to show cause. . . . The affidavit upon which such notice of motion or order to show cause is based shall set out with particularity the misconduct complained of, the claim, if any, for damages occasioned thereby, and such evidence as to the amount of damages as may be available to the moving party. A reasonable counsel fee, necessitated by the contempt proceeding, may be included as an item of damage.

[4] On the same day, New York commenced an action in federal court against Respondents and others alleging violations of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. § 248, and seeking injunctive relief, compensatory damages, and civil penalties.

[5] Because of Brusstar's default, a default judgment had already been entered against him. Accordingly, the July 26-28, 1994 hearing was deemed a trial on the issue of damages with respect to the nondefaulting Respondents, and an inquest with respect to Brusstar.

when it was read aloud to them by an officer of the Dobbs Ferry Police Department during the October 9, 1993 protest, and that Respondents had acted in concert with Brusstar. The court determined that Brusstar was either an officer of B.O.R.N., an unincorporated association named in the 1992 Injunction, or an officer of LIFE, B.O.R.N.'s "successor organization."

The court granted injunctive relief that substantially incorporated the terms of the 1992 Injunction, declined to impose fines, and awarded $45,523.11 in compensatory damages against Respondents jointly and severally, representing costs incurred by the Pavilion and the Village as a result of the October 9, 1993 and June 28, 1994 protests. The district court also awarded New York costs and reasonable attorney fees, which the court subsequently determined to be $2,847.54 against each Respondent except Sauley, and $1,982.79 against Sauley. *See New York by Koppell v. Operation Rescue Nat'l*, No. 92 CIV. 4884 (RJW), 1994 WL 517457 (S.D.N.Y. Sept. 21, 1994) ("Koppell I"). The court stayed enforcement of the judgment for thirty days, and offered to extend the stay indefinitely if Respondents made and kept a sworn pledge not to engage, anywhere in New York, in conduct that violated the 1992 Injunction as incorporated in the court's judgment.

B. *Sauley's Settlement.*

Prior to the start of the contempt trial, by letter dated July 11, 1994, Sauley made an offer of judgment pursuant

to Rule 68 of the Federal Rules of Civil Procedure.[6] Sauley offered to pay $15,000 as the "monetary portion of judgment," and to accept (1) a $2,000 suspended coercive fine and (2) injunctive relief in accordance with the 1992 Injunction except for provisions thereof "no longer relevant." Sauley's letter declared that he would seek to vacate the judgment pursuant to Rule 60 of the Federal Rules of Civil Procedure in the event that a court invalidated the 1992 Injunction. By letter dated July 20, 1994, New York rejected Sauley's offer, asserting that Sauley's reservation of his right to seek relief pursuant to Rule 60 rendered his offer of judgment "a nullity."

On July 26, 1994, Sauley made a second offer in open court, this time accepting liability for up to $15,000 in compensatory damages and submitting to a $10,000 suspended coercive fine and injunctive relief. New York accepted Sauley's offer, and the district court subsequently entered judgment against him. The judgment paralleled that entered against the other Respondents, except that Sauley's share of the joint and several liability was limited to $15,000 and Sauley was assessed a fine in the agreed amount. The district court stayed the fine, and

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[6] Rule 68 provides in pertinent part:

> At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. . . . If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

provided that it would be "vacated and expunged in its entirety" if Sauley complied with the injunctive portion of the judgment for three years or until the 1992 Injunction or any successor injunction expired, whichever first occurred.[7]

In assessing fees and costs against Respondents, the district court found Sauley responsible for his pro rata share of fees and costs incurred up until July 26, 1994, the date of Sauley's second offer of judgment. The district court rejected Sauley's argument that Sauley's liability should be limited to the fees and costs incurred up until July 11, 1994, the date of his first offer, holding that because the terms of the July 26 settlement were more favorable to New York than those offered on July 11, Rule 68's fee-shifting provision was facially inapplicable. *See Koppell I*, 1994 WL 517457 at *1.

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[7] *International Union, United Mine Workers v. Bagwell*, 114 S. Ct. 2552 (1994), limits the ability of a court to impose noncompensatory fines for indirect contempt (i.e., for contempt occurring outside the presence of the court) in the absence of criminal procedural protections. *See id.* at 2557-63; *see also New York State Nat'l Org. for Women v. Terry*, 41 F.3d 794 (2d Cir. 1994) (per curiam) (applying *Bagwell* to an injunction similar to the one in this case). Under *Bagwell*, a noncompensatory fine is civil, and thus may ordinarily be imposed in the absence of a criminal trial "only if the contemnor is afforded an opportunity to purge." 114 S. Ct. at 2558 (citing *Penfield Co. v. SEC*, 330 U.S. 585, 590 (1947)). Because Sauley does not challenge his fine on appeal, we need not decide whether the district court's judgment provided Sauley with the sort of "opportunity to purge" that *Bagwell* requires.

C. *Sanctions against Broderick.*

Pursuant to 28 U.S.C. § 1927 and the court's inherent powers, the district court sanctioned John Broderick, Respondents' counsel, in the amount of $2,500 following an incident involving videotaped evidence of the June 28, 1994 protest. On the third and final day of the contempt proceeding, Broderick began to play the hour-long videotape of the protest, which had been introduced in evidence by New York. After approximately fifteen minutes, the court interrupted the viewing to ask Broderick whether there was any relevant evidence on the remainder of the videotape that was not cumulative of the evidence already introduced. Despite having been furnished with the videotape several days before the start of the proceeding, Broderick responded that he had not previously viewed the tape. Broderick then asserted that because the videotape had been introduced as evidence in the case, he and his clients had a right to view the tape during the trial. Broderick also noted that two of the Respondents, Hudson and Yellico, had been incarcerated and had had no other opportunity to see the videotape.

The district court informed Broderick that he and his clients should have viewed the videotape outside of court beforehand, noting that the court would have enabled any incarcerated Respondent to view the videotape if an appropriate application for that relief had been made, and warned Broderick that if the tape failed to produce any noncumulative evidence, the court would "consider appropriate sanctions" against him. The district court interrupted the playing of the videotape several more times to inquire whether Broderick perceived any relevant new evidence. Each time, Broderick insisted that the

viewing of the videotape be continued. When the videotape ended, the court concluded that Broderick had "multiplied the proceedings . . . unreasonably and . . . vexatiously," and indicated that it would "entertain an application [for sanctions] at an appropriate time."

At the conclusion of the proceeding, and following the district court's determination that respondents had violated the 1992 Injunction, the district court gave Broderick the opportunity to apologize for conduct that the district court characterized as "inappropriate, unprofessional and . . . wasteful of the Court's time." Broderick refused to apologize, maintaining that he had "acted appropriately" and that his clients had "an absolute right" to view the videotape in open court once it had been introduced by New York as evidence against them. The court then sanctioned Broderick, and denied Broderick's subsequent motion to vacate the sanction. *See New York by Koppell v. Operation Rescue Nat'l*, No. 92 Civ. 4884, 1994 WL 557057 (S.D.N.Y. Oct. 7, 1994) ("*Koppell II*").

Discussion

As a preliminary matter, we consider whether Sauley may appeal from a judgment to which he consented. Appeal from a consent judgment is generally unavailable on the ground that the parties are deemed to have waived any objections to matters within the scope of the judgment. *See Nashville, C. & St. L. Ry. v. United States*, 113 U.S. 261, 266 (1885); *Mock v. T.G. & Y. Stores Co.*, 971 F.2d 522, 526 (10th Cir. 1992); *Coughlin v. Regan*, 768 F.2d 468, 469-70 (1st Cir. 1985); *Kelly's Trust v. Commissioner*, 168

F.2d 198, 199 (2d Cir. 1948) ("[A] consent judgment by its nature precludes an appeal."). However, a party consenting to entry of judgment may bring an appeal challenging the district court's subject matter jurisdiction. *Clapp v. Commissioner*, 875 F.2d 1396, 1398 (9th Cir. 1989); *White v. Commissioner*, 776 F.2d 976, 977-78 (11th Cir. 1985) (per curiam).

In view of our rejection of Respondents' claim that they were not proper parties to the contempt proceeding, we need not resolve whether this claim is a jurisdictional one that Sauley may raise on appeal. Respondents' other contention, however, is clearly jurisdictional in nature. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 231 (1990) ("[S]tanding 'is perhaps the most important of [the jurisdictional] doctrines.' ") (quoting *Allen v. Wright*, 468 U.S. 737, 750 (1984) (alteration in *FW/PBS*)). Sauley is therefore entitled to join the other Respondents in challenging on appeal the district court's authority to award New York damages on behalf of entities not party to the proceedings.

A. *The Applicability to Respondents of the 1992 Injunction.*

Rule 65(d) of the Federal Rules of Civil Procedure provides:

> Every order granting an injunction . . . is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Rule 65(d) codifies the well-established principle that, in exercising its equitable powers, a court "cannot lawfully enjoin the world at large." *Alemite Mfg. Corp. v. Staff*, 42 F.2d 832, 832 (2d Cir. 1930). In order for a court to hold a nonparty respondent in contempt of a court order, "the respondent must either abet the [party named in the order], or must be legally identified with him." *Id.* at 833; *see also Vuitton et Fils S.A. v. Carousel Handbags*, 592 F.2d 126, 129-30 (2d Cir. 1979). The party seeking enforcement of an order bears the burden of demonstrating that the persons to be held in contempt are within the scope of the injunction. *See Vuitton et Fils*, 592 F.2d at 129.

Respondents do not challenge the district court's findings that they received notice of the injunction at the October 9, 1993 protest and that they acted in concert with Brusstar at both the October 9, 1993 and the June 28, 1994 protests. They do contest, however, the court's finding that on the dates of these protests, Brusstar was acting as an agent of either B.O.R.N. or a successor organization to B.O.R.N.

An injunction issued against a corporation or association binds the agents of that organization to the extent they are acting on behalf of the organization. *See Young v. Colgate-Palmolive Co.*, 790 F.2d 567, 573 (7th Cir. 1986). Generally, persons who cease to act in one of the designated capacities are no longer bound by the decree. *See Alemite Mfg. Corp.*, 42 F.2d at 832-33. However, an organization and its agents may not circumvent a valid court order merely by making superficial changes in the organization's name or form, and in appropriate circumstances a court is authorized to enforce its order against a successor of the enjoined organization. *See Golden State*

Bottling Co. v. NLRB, 414 U.S. 168, 179 (1973) (holding that Rule 65(d) allows enforcement of orders against successors of enjoined parties); *Regal Knitwear Co. v. NLRB*, 324 U.S. 9, 14 (1945) ("Successors and assigns may . . . be instrumentalities through which [the] defendant seeks to evade an order. . . . If they are, by that fact they are brought within [the] scope of contempt proceedings by the rules of civil procedure."); *Walling v. James V. Reuter, Inc.*, 321 U.S. 671, 674 (1944) ("[An injunction] may . . . , in appropriate circumstances, be enforced against those to whom the business may have been transferred, whether as a means of evading the judgment or for other reasons."); *ICC v. Rio Grande Growers Coop.*, 564 F.2d 848, 849 (9th Cir. 1977) (successor corporation bound by injunction).

Whether a new organization is the successor of an enjoined organization depends upon the facts and circumstances of the case. *See Howard Johnson Co. v. Detroit Local Joint Executive Bd., Hotel & Restaurant Employees Int'l Union*, 417 U.S. 249, 256 (1974) (case-by-case approach particularly appropriate in light of difficulty of successorship question); *International Union of Operating Eng'rs, Local 150 v. Centor Contractors, Inc.*, 831 F.2d 1309, 1312-13 (7th Cir. 1987). The critical inquiry is whether there is a substantial continuity of identity between the two organizations. *Cf. John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 551 (1964) (adequate continuity of identity to support continuing duty to arbitrate); *Stotter Div. of Graduate Plastics Co. v. District 65, United Auto Workers*, 991 F.2d 997, 1001 (2d Cir. 1993) (same).

We are aware of the difficulties faced by a trier of fact in cases such as this, where similarly constituted groups

of individuals move fluidly between multiple unincorporated associations that share the same basic leadership and goals. Especially in view of the elusive nature of this inquiry, we conclude that the district court did not clearly err in finding that LIFE, an organization of which Brusstar was concededly an officer, was substantially a continuation of the B.O.R.N. organization. Both groups are essentially entities through which Brusstar and others organize anti-abortion protest activity in the New York, New Jersey, and Connecticut areas. The similarity of Brusstar's role as a leader of both B.O.R.N. and LIFE justified the district court in finding Brusstar bound by the 1992 Injunction in his capacity as an officer of LIFE. Thus, by acting in concert with Brusstar and with notice of the 1992 Injunction, the remaining Respondents were also so bound.

B. *The Contempt Proceeding.*

We turn to Respondents' challenge to the monetary portion of the judgment. The district court awarded New York "[c]ompensatory damages . . . representing . . . damages incurred by the Village . . . and . . . damages incurred by the . . . Pavilion." The court ordered that "[a]ny amounts of the judgment received by [New York] . . . shall be distributed to the Village . . . and the . . . Pavilion." Respondents contend that New York lacked standing to recover this award. We agree.

Our analysis is governed by *New York by Abrams v. Seneci,* 817 F.2d 1015 (2d Cir. 1987), in which we addressed the question "whether the Attorney General, suing as *parens patriae,* may obtain under RICO an order

directing payment of treble damages to its citizen-consumers injured by defendants' alleged illegalities." *Id.* at 1017. In the course of dismissing the suit for want of standing, we said that:

> The state cannot merely litigate as a volunteer the personal claims of its competent citizens. *Pennsylvania v. New Jersey*, 426 U.S. 660, 665, 96 S. Ct. 2333, 2335, 49 L.Ed.2d 124 (1976). Where the complaint only seeks to recover money damages for injuries suffered by individuals, the award of money damages will not compensate the state for any harm done to its quasi-sovereign interests. Thus, the state as *parens patriae* lacks standing to prosecute such a suit.

817 F.2d at 1017; *see also Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 607 (1982) ("[T]he State must articulate an interest apart from the interests of particular private parties. . . . "); *Town of West Hartford v. Operation Rescue*, 915 F.2d 92, 102-03 (2d Cir. 1990).

New York argues that it has an unmistakable sovereign interest in prosecuting Respondents for violations of the injunction. We agree that as a party to the proceeding in which the court's order issued, New York has standing to enforce compliance with that order by seeking injunctive relief, noncompensatory fines, and compensation for any economic loss *New York* may have suffered as a result of the contumacious conduct. However, New York's standing does not extend to the vindication of the private interests of third parties. *See Seneci*, 817 F.2d at 1017-18 ("To be sure, . . . [the state] alleges . . . injury to the integrity of the state's marketplace and the economic

well-being of all its citizens. Since, however, the monetary relief sought by the complaint is not designed to compensate the state for those damages, the asserted presence of such damages cannot serve as the foundation for the state's authority to act here as the representative of its citizens."); *see also Warth v. Seldin*, 422 U.S. 490, 515 (1975) ("[W]hether an association has standing . . . depends in substantial measure on the nature of the relief sought."). The damages award in this case was designed solely to reimburse the Pavilion and the Village for harm to their interests, and the district court's order awarding such relief to New York was accordingly invalid.

Because we vacate a portion of the relief provided to New York as the prevailing party, we also vacate and remand the award of attorney fees so that the district court may determine the proportion of counsel's work that was devoted to proving injury suffered by the Village and the Pavilion, and reduce its award accordingly. *See Knitwaves, Inc. v. Lollytogs Ltd.*, 71 F.3d 996, 1012 (2d Cir. 1995). In recalculating its award, the district court may hold Sauley liable for his share of fees up until Sauley's July 26, 1994 offer of judgment. Even if Rule 68 applies to cases that end in settlement,[8] it cannot help

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[8] In *EEOC v. Hamilton Standard Div., United Technologies Corp.*, 637 F. Supp. 1155 (D. Conn. 1986), the court rejected "the proposition that the offer of judgment provisions of Rule 68, Fed. R. Civ. P., apply to cases that end in settlement and a stipulated dismissal as well as to cases that end with the entry of judgment after trial." *Id.* at 1158. By contrast, the Ninth Circuit ruled in *Lang v. Gates*, 36 F.3d 73 (9th Cir.), *cert. denied*, 115 S. Ct. 579 (1994), that "to promote the purposes of Rule 68, the phrase 'judgment finally obtained' [in Rule 68] certainly would

Sauley here because, as the district court found in *Koppell I*, 1994 WL 517457, at *1, "the July 26th settlement differed from the July 11th offer in that the July 26th settlement was more favorable to plaintiffs," precluding the applicability of Rule 68. *See supra* note 6.

C. *The Sanctions against Broderick.*

In sanctioning Broderick, the district court relied upon both 28 U.S.C. § 1927 and its inherent supervisory powers. Section 1927 provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

This provision is designed to deter unnecessary delays in litigation by imposing upon attorneys an obligation to avoid dilatory tactics. *United States v. International Bhd. of Teamsters*, 948 F.2d 1338, 1345 (2d Cir. 1991). Sanctions under § 1927 require a finding of bad faith, which can be inferred " 'when the attorney's actions are so completely without merit as to require the conclusion that they must have been undertaken for some improper purpose such as delay.' " *Id.* (quoting *Oliveri v. Thompson*, 803 F.2d 1265, 1273 (2d Cir. 1986), *cert. denied*, 480 U.S. 918 (1987)). The district court's imposition of sanctions is

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encompass an order finally terminating the litigation as a result of settlement." *Id.* at 77.

reviewed under an abuse of discretion standard. *See In re Cohoes Indus. Terminal, Inc. (Baker v. Latham Sparrowbush Assocs.)*, 931 F.2d 222, 230 (2d Cir. 1991).

On the last day of the contempt hearing, Broderick insisted on viewing an entire hour-length videotape, even though there was no relevant matter on the tape that was not cumulative of its first fifteen minutes. Although Broderick claims not to have known what would be revealed by the videotape, he had several prior opportunities to view the tape outside of court. His failure to do so may not be condoned. *See Magill v. Dugger*, 824 F.2d 879, 886 (11th Cir. 1987) ("One of the primary duties defense counsel owes to his client is the duty to prepare himself adequately prior to trial.").

Nor is there merit to Broderick's contention that his clients had a right to have recorded evidence displayed in its entirety in open court. Both the mandate of Rule 1 of the Federal Rules of Civil Procedure that those rules be construed "to secure the just, speedy, and inexpensive determination of every action," the dictate of Rule 102 of the Federal Rules of Evidence that those rules be construed to eliminate "unjustifiable expense and delay," and the allowance in Rule 1006 of the Federal Rules of Evidence for complex evidence to be presented in summary form should be read to preclude an absolute right of a litigant to command that a videotape be shown in full, or every word of a document be read, in open court. Under these circumstances, the district court was entitled to infer that Broderick's conduct was undertaken in bad faith, and did not abuse its discretion in finding that this conduct so unreasonably and vexatiously multiplied the proceedings as to warrant sanctions under 28 U.S.C.

§ 1927. *See Koppell II*, 1994 WL 557057 at *2. Because we uphold the sanctions pursuant to § 1927, we do not reach the issue whether the sanctions were independently justified under the district court's inherent powers.

Conclusion

The district court's order assessing sanctions against Broderick is affirmed. The court's judgments holding Respondents in civil contempt of the 1992 Injunction and enjoining them from future similar violations are affirmed. The award of $45,523.11 in compensatory damages is vacated, and the award of attorney fees is vacated and remanded for further proceedings consistent with this opinion. The parties shall bear their own costs.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK, by G. OLIVER KOPPELL, Attorney General of the State of New York, Plaintiffs, -against- OPERATION RESCUE NATIONAL, et al., Defendants, -and- DANIEL BRUSSTAR; NORMAN WESLIN; JOHN DUNKLE; RAYMOND MYLOTT; MARY L. BILTZ; E.J. GANNON; CAROL M. HAGEN; MICHAEL J. HENRY; CLARENCE HINKE; COLIN HUDSON; ETHEL NORTON; EDWARD SAULEY; LOLA YELLICO; and JAMES YONAN, Respondents.	MEMORANDUM AND ORDER 92 Civ. 4884 (RJW)

John J. Broderick ("Broderick"), counsel for respondents, moves to vacate this Court's order dated August 9, 1994 imposing sanctions against him, pursuant to 28 U.S.C. § 1927 ("§ 1927") and the Court's inherent powers, in the amount of $2,500 payable to the United States of America. Since the transcript of the evidentiary hearing

held from July 26, 1994 to July 28, 1994 ("the proceedings") provides ample support for the imposition of sanctions, Broderick's motion is in all respects denied.

BACKGROUND

Plaintiffs, the People of the State of New York, moved for a judgment of civil contempt claiming that respondents violated a preliminary injunction issued by this Court on July 13, 1992 by engaging in blockades of the Women's Medical Pavilion in Dobbs Ferry, New York, on October 9, 1993 and June 28, 1994. The Court conducted an evidentiary hearing beginning on July 26, 1994 and concluding on July 28, 1994 to consider this claim. Subsequently, this Court held respondents Daniel Brusstar, Norman Weslin, John Dunkle, Mary L. Biltz, E.J. Gannon, Carol M. Hagen, Michael J. Henry, Clarence Hinke, Colin Hudson, Ethel Norton, Lola Yellico, and James Yonan to be in civil contempt of the preliminary injunction and entered a judgment against respondent Edward Sauley pursuant to Rule 68 of the Federal Rules of Civil Procedure.

During the proceedings, Broderick's dilatory conduct resulted in a waste of this Court's time. On July 22, 1994, Broderick was furnished with videotapes of the blockades which took place on October 9, 1993 and June 28, 1994 ("the tapes"). After court on July 27, 1994, this Court viewed the tape of the October 9th blockade at which the Court's injunctions were read. This Court's injunctions were not read at the June 28th blockade. Despite having been in possession of the tapes from July 22 until July 28, Broderick failed to view them himself or to make any

efforts to show them to his client Lola Yellico ("Yellico") prior to the proceedings. Instead, after the first several minutes of the June 28th tape were shown and against the strong advice of this Court, Broderick insisted upon showing that tape in its entirety during the evidentiary hearing.

This Court made its displeasure with counsel's conduct clear and, on July 28, offered Broderick several opportunities to apologize for the delay he caused in the proceedings. Instead of taking advantage of the Court's offer, however, Broderick refused to make amends. Indeed, Broderick's colleague, A. Lawrence Washburn, Jr. ("Washburn"), went so far as to apologize for the improper acts of his co-counsel. This Court directly offered Broderick the opportunity merely to associate himself with Washburn's comments to avoid sanctions. By his refusal to do so, Broderick left this Court no choice but to assess sanctions against him for wasting the Court's time. By an order dated August 9, 1994, this Court fined Broderick the amount of $2,500 and directed that the fine be paid to the United States of America.

DISCUSSION

In sanctioning Broderick for his dilatory conduct, this Court relied on 28 U.S.C. § 1927 and on its inherent powers.

I. 28 U.S.C. § 1927

28 U.S.C. § 1927 is primarily "concerned . . . with limiting the abuse of court processes." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 762 (1980). The statute provides:

> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

§ 1927 is intended to preserve judicial resources and to prevent delays in court proceedings resulting from counsel's conduct. *See United States v. Int'l Bhd. of Teamsters*, 948 F.2d 1338, 1345 (2d Cir. 1991). To achieve this purpose, the statute "impose[s] . . . a continuing obligation throughout the course of the litigation 'to avoid dilatory tactics.' " *Mopaz Diamonds, Inc v. Inst. of London Underwriters*, 822 F. Supp. 1053, 1058 (S.D.N.Y. 1993) (citation omitted).

The Second Circuit has held that "an award made under § 1927 must be supported by a finding of bad faith. . . . " *Oliveri v. Thompson*, 803 F.2d 1265, 1273 (2d Cir. 1986). Further, the *Oliveri* court noted that such a finding " 'must appear with reasonable specificity in terms of the perceived misconduct and the sanctioning authority.' " *Id.* at 1346 (quoting *Jones v. Pittsburgh Nat'l Corp.*, 899 F.2d 1350, 1359 (3d Cir. 1990)). In the case at bar, there is no doubt that Broderick acted in bad faith during the proceedings and that sanctions against him are fully justified.

Broderick's failure to review the tapes himself or to show them to Yellico prior to the proceedings was totally inappropriate. Had he fulfilled his professional obligations, Broderick would have known that showing the entire tape of the June 28th blockade, at which this Court's injunctions were not read, would add nothing of value to the record and that its contents were cumulative. Broderick's request that the Court view that tape in full served no valid purpose and was an utter waste of time. As the Court noted on July 28, 1994, Broderick's lack of preparation caused this Court to sit for the better part of one hour as "an unwilling witness to something that turned out to be useless." This conduct alone so unreasonably and vexatiously multiplied the proceedings as to warrant sanctions under 28 U.S.C. § 1927.

Further, Broderick evidenced his disrespect for the Court by refusing to apologize for his dilatory behavior. Despite his egregious behavior, Broderick could easily have made amends for his poor judgment and thus avoided sanctions. The transcript reflects that this Court offered Broderick numerous opportunities to apologize and directly stated its willingness to drop the threat of sanctions upon his so doing. With a few words, Broderick could have associated himself with the comments of his colleague, Washburn, and the Court would have been spared this unpleasant task. By his unreasonable obstinacy, Broderick clearly demonstrated the bad faith needed to support the sanctions assessed against him under § 1927.

II. Inherent Powers

" 'Courts of justice are universally acknowledged to be vested, by their very creation, with the power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.' " *Chambers v. Nasco, Inc.*, 111 S. Ct. 2123, 2132 (1991) (quoting *Anderson v. Dunn*, 19 U.S. (6 Wheat.) 204, 227 (1821)). These implied powers enable the Court to control judicial proceedings "so as to achieve the orderly and expeditious disposition of cases." *Id.* One such power is the Court's right "to levy sanctions in response to abusive litigation practices." *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980). To that end, "[a]n inherent power award may be imposed either for commencing or for continuing an action in bad faith, vexatiously, wantonly, or for oppressive reasons." *Oliveri v. Thompson*, 803 F.2d 1265, 1272 (2d Cir. 1986).

Broderick misreads *Chambers* to require the Court to find alternative schemes inadequate before relying on its inherent power to impose sanctions. Contrary to Broderick's assertion, the availability of 28 U.S.C. § 1927 and Rule 11 of the Federal Rules of Civil Procedure in no way diminishes this Court's inherent power to sanction an attorney for his dilatory conduct. *See Chambers*, 111 S. Ct. at 2134. Indeed, "neither is a federal court forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the rules." *Id.* at 2135-36.

As under § 1927, the Court must make a finding of bad faith before relying on its inherent power to assess sanctions. *See United States v. Int'l Bhd. of Teamsters*, 948 F.2d 1338, 1347 (2d Cir. 1991). Broderick's continuing

course of conduct throughout the proceedings, as specified in greater detail above, provides ample basis for sanctions. Both his misguided decision to waste this Court's time by showing a videotape which he had failed to review prior to the proceedings and his subsequent refusal to apologize for his dilatory conduct despite this Court's numerous offers of leniency clearly evidence Broderick's bad faith.

CONCLUSION

For the foregoing reasons, Broderick's motion to vacate this Court's order dated August 9, 1994 imposing sanctions is in all respects denied. Pursuant to 28 U.S.C. § 1927 and the inherent powers of this Court, Broderick is directed to deliver to the Clerk of the Court a certified check in the amount of $2,500 made payable to the United States of America not later than 12:00 noon on October 19, 1994.

It is so ordered.

Dated: New York, New York
October 6, 1994

Robert J. Ward
U.S.D.J.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 29th day of March, one thousand nine hundred and ninety-six.

PRESENT: HON. Thomas J. Meskill
HON. J. Daniel Mahoney
HON. John M. Walker, Jr.

Circuit Judges

(Filed Mar. 29, 1996)

Docket Nos. 94-7947, 94-9039

PEOPLE OF THE STATE OF NEW YORK, by Dennis Vacco, Attorney General of the State of New York,

Plaintiff-Appellee,

-v-

OPERATION RESCUE NATIONAL; RANDALL TERRY; KEITH TUCCI; YOUTH FOR AMERICA; MISSIONARIES TO THE PRE-BORN; JOSEPH FOREMAN; JOHN AND JANE DOES; PATRICK MAHONEY; B.O.R.N.

Defendants,

RAYMOND MYLOTT,

Respondent,

DANIEL BRUSSTAR; NORMAN WESLIN; JOHN DUNKLE; MARY L. BILTZ; E. J. GANNON; CAROL M. HAGEN; MICHAEL J. HENRY; CLARENCE HINKE; COLIN HUDSON; ETHEL NORTON; EDWARD SAULEY; LOLA YELLICO; JAMES YONAN,

Respondents-Appellants,

UNITED STATES OF AMERICA,

Creditor-Appellee,

JOHN J. BRODERICK, ESQUIRE,

Appellant.

Appeal from United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Southern District of New York and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ORDERED, ADJUDGED, and DECREED that the judgments of said district court be and they hereby are affirmed in part, vacated in part, and remanded to the said district court for further proceedings in accordance with the opinion of this court.

The parties shall bear their own costs.

For the Court
GEORGE LANGE III, Clerk
By:
/s/ Beth J. Meador
Beth J. Meador
Administrative Attorney